

COMMONWEALTH OF PENNSYLVANIA*



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SEP 23 1999
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Magalie Roman Salas
Office of the Secretary
Federal Communications Commission
445 12th Street, S. W.
Washington, DC 20554


In the Matter of Low-Volume Long-Distance
Users
CC Docket No. 99-249; FCC 99-168

Dear Ms. Salas:

Enclosed please find an original and four copies of the Joint Consumer Advocate Comments in the above-referenced matter. Please also note that these Comments have been filed with the Commission electronically.

Please indicate your receipt of this filing on the additional copy provided and return it to the undersigned in the enclosed self-addressed, postage prepaid, envelope. Thank you.

Sincerely yours,


Joel H. Cheskis
Assistant Consumer Advocate

Enclosure

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**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

In the matter of : **CC Docket No. 99-249**
: **FCC 99-168**
Low-Volume Long-Distance Users :

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**COMMENTS OF THE
JOINT CONSUMER ADVOCATES**

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I. INTRODUCTION

The Joint Consumer Advocates consist of the Pennsylvania Office of Consumer Advocate, the Maine Office of Public Advocate, the Maryland Office of People's Counsel, the New Mexico Attorney General, the Missouri Office of the Public Counsel, the Connecticut Office of Consumer Counsel, the New Hampshire Office of Consumer Advocate, the Washington D.C. Office of People's Counsel, and the Washington Office of Attorney General. Each of the Joint Consumer Advocates have been granted lawful authority in their respective states to represent consumers of utility services before their state public utilities commission, state and federal courts, and federal agencies. Each of the Joint Consumer Advocates is familiar with telecommunications regulation and recent policies of the Federal Communications Commission (the Commission). We submit these Comments in response to the Notice of Inquiry in the Matter of Low-Volume Long-Distance Users ("NOI") as released by the Commission on July 20, 1999.

The Joint Consumer Advocates are gratified that the Commission is undertaking this inquiry to determine the effects of its policies on low-volume long distance customers. We believe the problem is enormous -- in many cases, low-volume telephone customers are confronted with toll charges that are many multiples of the total bill they paid prior to access charge reform and new competitive policies, resulting in telephone bills that may effectively charge \$10.00 or more for a single minute of use.¹ While there may well be certain fixed costs that IXCs legitimately seek to recover, the Commission should find that it is unconscionable to charge low-volume customers an effective per-minute rate that may be five, ten or even one-hundred times higher than rates paid by high-volume customers. Those rates result in substantial harm to millions of low-volume toll customers that must be viewed as contrary to what Congress and the Commission intended when new pro-competitive laws and policies were developed and implemented. Based on our direct experience, there is widespread frustration and confusion among telephone customers as a result of the PICC surcharge, the Universal Service Fund surcharge, and monthly minimums imposed by interexchange carriers "IXCs". There is also widespread financial hardship being imposed upon many of these customers as a result of surcharges and minimums²

¹See sample telephone bill attached as Exhibit A

²Despite the view of some parties that low-volume customers are not necessarily customers who can't afford their long distance rates, our experience with a large volume of customers who have called to complain about surcharges and minimums indicates that affordability is the primary concern. It is also clear that there is a strong correlation between income levels and toll usage. See Bureau of Labor Statistics, Consumer Expenditure Survey: 1997, The Yankee Group, Understanding Consumer Spending on

For the reasons addressed in these comments, the Joint Consumer Advocates urge the Commission to adopt a “no losers” policy with respect to reforms in access charges and other telecommunications regulation.³ The Joint Consumer Advocates urge the Commission to find that it is unnecessary to harm any class of customer in order to move toward a more efficient access charge structure and a more competitive market. Such a policy is entirely reasonable and justifiable because the harm being caused to low-volume telephone customers is, in large part, a result of regulatory policies, not the result of a free competitive market. Accordingly, we urge the Commission to immediately eliminate or substantially limit flat non usage-related charges billed by IXC's. The Joint Consumer Advocates recommend that if the Commission is unwilling to entirely eliminate end-user surcharges and minimums, any allowed non-usage related charges on interexchange toll bills be capped at 10% of the usage-related portion of the bill, or \$3, whichever is less.

In addition, the Joint Consumer Advocates urge the Commission to reduce or eliminate the Subscriber Line Charge (SLC) as the National Association of State Utility Consumer Advocates (NASUCA), the Consumer Federation of America (CFA), and Consumers Union (CU) have urged on prior occasions. Finally, the Joint Consumer Advocates will discuss and

Communications, December, 1998.

³The central purpose of pro-competitive policies is to reduce prices paid by customers. While competitive markets may bring different degrees of benefit to different types of customers, free markets that become more competitive, all else being equal, do not result in higher prices for any class of customers. As prices move toward long run marginal costs, all customers should benefit.

suggest other alternative actions that the Commission may take to mitigate the unreasonable increases in the telephone bills of low-usage customers. Until such action is taken, low-volume users of long distance services will not share in the benefits that Congress intended for all Americans when it passed the Telecommunications Act of 1996. To the contrary, they are and will continue to be, substantially harmed.

In addition to the issues raised in the Commission's Notice of Inquiry, we urge the Commission to find that the advertisement of low per-minute rates by IXC's that fail to disclose other aspects of their rates which are billed as flat or percentage-based surcharges or monthly minimums, is inherently deceptive. But for the Filed Rate Doctrine,⁴ representatives of consumers would have had the opportunity to bring legal actions challenging PICC surcharges, USF surcharges, and monthly minimums as deceptive departures from advertised rates. Therefore, contrary to the view of some that the Commission should refrain from interfering in an arguably competitive market, the reality is that the existing regulatory/legal framework has created substantial harm to many customers and, at the same time, deprived those customers of all legal remedies. Required contributions to the USF are not a result of a free market. PICC charges are not the result of a free market. And the Filed Rate Doctrine, which shields telephone companies from traditional consumer remedies, is not the result of a free market. The Commission acknowledges that the harm being caused to low-volume customers was an

⁴The Filed Rate Doctrine has effectively barred all legal actions against IXC's on behalf of consumers seeking redress for unfair or deceptive trade practices, under the theory that the Commission has approved filed rates.

unintended consequence of its recent reforms intended to enhance competition in telecommunications services. It is therefore abundantly appropriate for the Commission to take action to remedy those unintended consequences.

The Joint Consumer Advocates urge the Commission to find it unreasonable that IXC's are billing PICC and USF surcharges well in excess of the costs imposed upon them by regulation. Those charges require that the IXC's core customers generate subsidies that tend to insulate new services from joint and common cost contribution. In a truly competitive market, IXC's would not have the ability to recover excess revenues for itemized extrinsic costs. In this case, IXC's are using the Commission's actions as a device to implement rate increases while their overall costs, including access-related costs, are in decline.

The Joint Consumer Advocates also urge the Commission to find that hidden rate increases achieved through end-user surcharges do harm to the development of a competitive market. In most competitive markets, consumers have the ability to compare prices from different suppliers and make rational market choices. In the case of long-distance telephone services, surcharges and minimums make those comparisons almost impossible.⁵ This obstacle to consumers' ability to gather the necessary accurate information to make a rational market choice does significant harm to the development of a competitive market.⁶

⁵In fact, we have heard directly from dozens of consumers that they are incapable of determining the best calling plan even with the help of a free telephone rate comparison guide published by the Maine Office of Public Advocate.

⁶Economists make the essential assumption that information is readily available in a competitive market.

II. COMMENTS

A. The Commission Should Take Direct Action to Preclude Unjust and Unreasonable Rates For Low-Volume Customers Because Those Rates Have Become Extremely High, as the Notice of Inquiry Recognizes.

In 1996, Congress passed the Telecommunications Act of 1996 (“the Act”) which sought to bring about competition to the local telephone market while maintaining and advancing the goal of universal service. Many issues have arisen from the passage of the Act and true, meaningful and irreversible competition has been slow in coming. The Joint Consumer Advocates submit that there have been no benefits of competition for the low-volume customers – those customers have in fact been substantially harmed. Ironically, the low-volume user faces much higher rates now than before the Act and before access charge reform.

The NOI provides a history of the access charge system, *Id.* at ¶¶ 2-7, which illustrates how the costs of the infrastructure upon which long distance calls are carried are allocated between the incumbent local exchange carriers “ILECs” and the interexchange carriers (“IXCs”). With respect to the recovery of these costs, the NOI specifically indicates that the Commission allowed ILECs the opportunity to recover costs of providing the local loop through a flat monthly end-user common line charge called the subscriber line charge (“SLC”) as well as the carrier common line charge (“CCLC”). IXCs, on the other hand, recovered much of their costs from their customers through per-minute charges for long-distance service. Therefore, telephone users have grown accustomed to paying for long-distance service primarily to the extent that they

generate minutes of long-distance use. Id at ¶ 4. Any sudden change from this long-standing regulatory environment must take into account, and provide mitigation against, substantial impacts on the most vulnerable customers.

While the general message that decision makers often hear today is that a move from a regulated to a competitive market will deliver economic advantages to consumers, such conclusions are generally couched in terms of “aggregate” or “average” consumers. A 1998 report by the Consumer Energy Council of America Research Foundation perhaps stated it best in finding:

While there is a growing body of evidence that shows all customer classes can ultimately benefit from competitive markets, it is important to remember that there will always be winners and losers, at least in the short-term, due to any major economic and societal transformation. This is particularly true for those consumer classes that are most vulnerable - residential and small business customers. More specifically, special vigilance must be paid to mitigate any negative impacts of the transition to competition on low-income consumers.

Restructuring the Electric Utility Industry: A Consumer Perspective, at 89, Consumer Energy Council of America Research Foundation: Washington, D.C. The Joint Consumer Advocates submit that low-volume long-distance telephone users have not received the benefits of the transition of the long distance market to a competitive environment.

Monthly minimum charges by such carriers as AT&T⁷ and MCI⁸, coupled with other flat-rated charges that are non-traffic sensitive, create the unconscionable scenario where customers are required to pay at least several dollars each month for a service they did not use. In fact, many of the Joint Consumer Advocates have received complaints from individual consumers that bring the reality of this problem to light. For example, one AT&T customer in Pennsylvania demonstrated that she was charged \$14.10 for three months of service when in fact the only long-distance call made during that period was a six minute call for a total charge of \$0.84. Another customer who sent his bill to the Maine Public Advocate demonstrates that he was billed \$13.16 by AT&T when his only usage was one one-minute call billed at 16 cents. (Attached as Exhibit A). Prior to the implementation of minimum charges and surcharges, customers would receive the charge associated with the amount of usage, but would not receive any long-distance charge if they did not make any long-distance calls.

The addition of a minimum monthly fee on the long-distance telephone bill of consumers, coupled with the increase in surcharges added to the local telephone bill as a result of the implementation of provisions of the Telecommunications Act of 1996, has caused an unconscionable increase in low-volume consumers' telephone bills.⁹ This was the opposite of

⁷See, AT&T Tariff FCC No. 27, 1st Rev. P. 4-7.3, at §4.1.1.N (eff. June 15, 1999); 1st Rev. P. 24-57.39, at §24.1.1.U.2 (eff. Sept. 5, 1998).

⁸See, MCI Tariff FCC No. 1, 140th Rev. P. 19.1, at §C.3.021211 (eff. Feb. 1, 1999); 3rd Rev. P. P. 19.183, at §C.3.4.21 (eff. Jan. 3, 1998).

⁹In addition to the PICC surcharge, USF surcharge, and monthly minimums, end-use customers also pay state-imposed surcharges, local number portability surcharges, the

the intended effect when Congress passed the Act. This situation cannot be sustained in light of the Commission's overall policy of universal service which seeks to ensure that all consumers are able to afford telephone service.

For the reasons set forth above, the Commission should find that the definition of "affordability" under Section 254 of the Act requires that customers who make very few calls be charged a reasonable price based on their actual minutes of use. The Joint Consumer Advocates also recommend that the Commission consider that the concept of Universal Service should include some amount of affordable interstate interexchange service for low-volume customers.

B. It is Reasonable for the Commission to Take Direct Action to Eliminate or Substantially Limit Harms to Low-Volume Customers Because Those Harms Result From the Current Legal and Regulatory Environment, Not From the Effects of Competition

The Telecommunications Act of 1934, as amended, continues to provide the Commission with the authority to ensure that rates are just and reasonable and to declare unjust or unreasonable rates to be unlawful. While the Notice of Inquiry questions whether PICC, USF and monthly minimums must be recovered, Chairman Kennard's letter of February 26, 1998 to MCI's Chairman makes reference to evidence showing that surcharges were unjustly enriching IXCs. In that letter, he wrote:

common line charge, and federal and state taxes which are increased as a result of the aforesaid underlying surcharges and minimums.

I am writing to you regarding the growing body of evidence that suggests that the nation's largest long distance companies are raising rates when their costs of providing service are decreasing, and are blaming congressional actions and federal implementing rules for those rate increases even though recent actions of this Commission have in fact reduced the long distance companies' costs.

The Chairman's letter is supported by analyses undertaken by the United States Telephone Association, which were filed with the Commission. Those analyses showed that IXCs had then increased charges to customers by approximately \$2.3 billion since the Commission's Access Charge Reform orders with no offsetting long distance rate decreases.¹⁰

If rates are increasing for a large class of customers while costs are declining and if PICC and USF surcharges, combined with new minimum charge revenues, greatly exceed the true underlying costs of maintaining an account for a low-volume customer, the FCC would have ample basis to conclude that rates to these customers are not just and reasonable. If the Commission is to give meaning to "affordability" under Section 254 of the Act, the Commission must consider the actual per-minute rates that low-volume users are paying. An effective rate of \$5 or \$10 per minute is neither reasonable nor affordable, especially in comparison to high-volume customers who may be paying much closer to \$.07 per minute. If these rates are unreasonable and unaffordable, the Commission must take direct action.

Conversely, if the Commission now believes that the charges now being imposed upon low-volume customers may be cost-based, the Commission should require that each IXC provide

¹⁰These allegations were made by the USTA on February 11, 1998

a study demonstrating their non traffic sensitive costs per customer to justify the disparity between the flat charges imposed upon high-volume and low-volume customers. Each IXC should also be required to account for the total revenues now being recovered in the name of regulatory (PICC and USF) costs. If a competitive market requires that implicit subsidies be removed, it is only by requiring actual data that the Commission will know where the subsidies really lie.

Taking such direct action would not be a signal that the Commission seeks to revert to rate regulation for IXCs or alter its policies toward the development of more competition. Rather, such direct action to eliminate or limit flat charges on low-volume customers' bills would be in recognition of the fact that those charges were an unintended, unacceptable consequence of prior Commission initiatives.

Corrective action by the Commission is also necessary and appropriate in order to curtail inherently deceptive practices that frustrate consumers and distort and inhibit the development of a competitive market. It is apparent that IXCs have used the Commission's access charge reforms and enhanced USF program as a device to recover revenues well in excess of those underlying costs. IXCs have also used those regulatory events as a basis to institute flat charges that masquerade as mandated regulatory pass-throughs. The icing on the cake overlaying these unreasonable practices is that IXCs have engaged in saturation advertising prominently touting per minute rates without any disclosure of the flat components of their rates.¹¹ In other

¹¹These omissions cannot be construed as de minimis when the omitted components frequently represent the majority of dollars charged to the low volume customer.

industries, consumers would have remedies to such practices; in this industry, the very existence of this Commission precludes any remedy not provided by the Commission, as discussed below.

C. The Existence of the Filed Rate Doctrine Requires That the Commission Exercise its Regulatory Power to Prevent Unjust and Unreasonable Rates

Contrary to the view of some that the Commission should refrain from interfering in an arguably competitive market, the existing regulatory/legal framework governing telephone rates is the very cause of the problem consumers are facing. The Filed Rate Doctrine is currently the law of the land as a result of decisions by the U.S. Supreme Court and other federal courts.¹² The Filed Rate Doctrine essentially requires an irrebuttable presumption that filed rates are valid because the Commission has jurisdiction over those rates. The Filed Rate Doctrine has effectively barred any claims that consumers might make to challenge unfair or deceptive trade practices by IXC's.

While the Joint Consumer Advocates support policies aimed at the development of a competitive market, the Commission must recognize that the interexchange toll market is not perfectly competitive and the market distortions must be corrected. If the Commission were not to exercise its jurisdiction, as urged by the Joint Consumer Advocates, it would then be essential that the Filed Rate Doctrine be eliminated. Currently, however, the IXC's are having their cake and eating it too. The IXC's oppose the elimination of their requirement to file tariffs because

¹²See Marcus v. AT&T Corp. 138 F. 3d 46, (2nd Cir. 1998), AT&T v. Central Office Telephone, Inc. 118 S. Ct. 1956 (1998).

that would end their unjustified protections from ordinary legal remedies. However, until the Filed Rate Doctrine is eliminated, and until the interexchange toll market operates more like a real competitive market, we must urge the Commission to protect the most vulnerable customers when they are being substantially and unjustly harmed. The Commission, in its NOI, acknowledges that the harm being caused to low-volume customers was an unintended consequence of its recent reforms. Those who argue that any such action is tantamount to re-regulating a competitive market ignore the fact that the current predicament of low-volume long distance customers is a consequence of current regulatory policy, deceptive industry practices, and undue industry protection resulting from the Filed Rate Doctrine.

D. Low-Volume Customers Have No Appropriate Market Alternatives to a Presubscribed Interexchange Carrier

The Joint Consumer Advocates agree with the Commission that it might refrain from taking direct regulatory action if low-volume customers could avoid unreasonably high bills simply by switching carriers or choosing no carrier and making toll calls by means of “dial around” services. We will address each of those potential alternatives.

Our survey of the calling plans available to residential customers indicates that each major carrier offering reasonable rates include PICC and USF surcharges. Although there are some calling plans that offer no monthly minimums, these plans generally charge high per-minute rates or per-call minimums. We believe that the ability to change carriers is not a sufficient remedy for low-volume telephone customers.

As the Commission aptly notes, “dial around” carriers advertise heavily and some have plans without monthly or per-call charges. However, there are at least four reasons why “dial around” services should not be deemed a sufficient alternative. First, the rates for dial-around services are often complex - many have confusing time of day distinctions, higher intraLATA rates, setup surcharges, or per-call minimums. Second, many “dial around” services have already begun to bill a monthly USF surcharge to any customer who uses their 10-10-XXX number in a given month. Third, LECs will bill the PICC charge directly when a customer de-selects his or her long distance carrier. And fourth, there is a convenience, health, and safety concern when customers must remember to dial a 7-digit access code in order to complete a toll call. It should be noted that in some rural areas, emergency response numbers are not always local. Although many customers have resorted to “dial around” services in an attempt to escape the burdens imposed by monthly surcharges and minimums, it would be poor public policy to relegate low-volume customers to these services. Therefore, even if a significant number of customers are making this competitive choice, the Commission should not consider this to be evidence that the market is providing alternatives. To the contrary, it is evidence that consumers are so frustrated with recent developments in telecommunications regulation and pricing that they are willing to sacrifice the convenience and safety that they have historically been provided.

E. The Commission Should Take All Steps Necessary to Make Certain That Low Volume Users Can Effectively Make Market Choices to Avoid Excessive Charges.

The Joint Consumer Advocates submit that one method that can help low-volume long-

distance users to avoid a monthly minimum would be to have better rate disclosure requirements. One type of rate disclosure requirement that would benefit consumers would be a requirement that customers receive prominent notice of any price increases or new charges. Elementary contract law requires that the buyer agree to pay the price charged by the seller before the buyer is obligated to pay. In the interexchange market, customers are frequently required to pay new charges that have neither been disclosed nor meaningfully reviewed by any regulatory process. Surcharges are generally not disclosed in any advertising and are poorly labeled in the fine print of the bill. Furthermore, the Commission should make a concerted effort to educate consumers so that they are aware that they do not need to pre-subscribe to a long-distance provider if they do not so desire.¹³ Many customers may not realize that they have the option to drop their pre-subscribed long-distance service provider and use various types of per call and “dial around” services if they do not make any or make only a few long-distance calls.

The Joint Consumer Advocates recognize that the Commission has previously required that IXC's must disclose all of their terms and conditions for long distance service to consumers. In the Matter of Policy and Rules Concerning the Interstate, Interexchange Marketplace; Implementation of Section 254(g) of the Communications Act of 1934, as amended, CC Docket No. 96-61, Second Order on Reconsideration and Erratum, March 31, 1999. In that Order, the Commission stated: “There is abundant evidence that making information available to

¹³However, as previously noted, consumer who chooses no long distance carrier will, in all likelihood, continue to pay PICC and USF surcharges. The PICC will be billed by the LEC and the USF surcharge is now billed by most “dial around” carriers.

consumers is beneficial to competitive markets.” *Id.* at ¶ 15. The importance of this point is clear from the abundant response from low-volume consumers that have received extremely high long distance bills without ever receiving notice that such charges would be applied.

Consumers could be protected in part from this practice if IXC's are required to provide clear information to consumers listing all of the charges that these consumers will have to pay. From the information gathered to date, we are quite certain that this often does not happen. This has led to great resentment from consumers who believe that they have been misled and deceived by advertising promising low per-minute rates but neglecting to inform them about other surcharges that will be applied.

Current rules require an IXC to maintain this information at one location and on an Internet website. 47 C.F.R. § 42.10. This is inadequate for many of the low-volume consumers affected by this problem. Joint Consumer Advocates proposes that the Commission should also require an IXC to send this information in written form to all customers before the customers begin to incur any surcharges or minimum fees.

F. The Commission Should Reduce the Amounts Paid by Low Volume Consumers by Reducing Consumer Rates Most Clearly Under Its Direct Control, i.e. the Subscriber Line Charge.

The Commission has properly recognized that the charges paid by low-volume consumers for interstate long distance service are often excessive. One alternative means by which the Commission may reduce the charges that such consumers pay would be to reduce or

eliminate the Subscriber Line Charge (“SLC”) that all consumers must pay.

Consumers have been subject to flat charges in addition to the charges discussed in the NOI. NOI at 7-8. For example, most consumers also pay an additional monthly charge for local number portability. In addition many consumers pay state approved surcharges, and all consumers pay state and federal taxes that are inflated by the existence of other surcharges. The combined effect of all of these relatively new surcharges is that low-volume consumers now pay more for telephone service than before the Telecommunications Act of 1996 was passed. The Commission should take this opportunity to reverse these price increases.

The National Association of State Utility Consumer Advocates (NASUCA), the Texas Office of Public Utility Counsel, the Consumer Federation of America, and Consumers Union filed Comments on July 22, 1999 at In the Matter of Federal-State Joint Board on Universal Service and Access Charge Reform, CC Docket No. 96-45, CC Docket No. 96-262 and proposed that the SLC should be reduced or eliminated. The Joint Consumer Advocates believe that this proposal could also serve as an alternative means to mitigate the harm now experienced by low-volume users. This proposal would also provide some relief to other long-distance customers who are experiencing rising prices at a time when costs are declining and competition is increasing. If the Commission has any question about the degree to which it should control rates imposed by IXC's, at the very least, it is clear that the SLC is under the Commission's control and authority. For these reasons, and for the reasons set forth in the Comments cited above, the Commission should reduce the SLC as one means of mitigating the problems cited in the NOI.

G. Response to Questions the Commission Specifically Raised in the NOI.

1. Implicit Subsidies and Market Dynamics.

The Joint Consumer Advocates understand the importance of removing subsidies in order to ensure the development of a fair competitive market. NOI at ¶ 15. However, it is also important to recognize that the issue of subsidies is much more complex than the removal of non traffic-sensitive costs from rates that vary with usage. It is important to recognize that the reaction to the Commission's Access Reform policies by the IXC's has created a whole new set of subsidies that the Commission never intended. For example, as the Commission notes, various IXC's intentionally charge PICC and USF surcharges that substantially exceed their underlying per-line costs.¹⁴ In many instances, the access and universal service surcharges on low volume consumers' bills are far in excess of any underlying costs charged to the IXC for access and universal service.

It is also problematic for the Commission to declare that it must remove all subsidies from telephone rates when, in fact, the Commission has never examined the underlying costs of the IXC's. Pricing policies by IXC's demonstrate that the national long distance telephone market is not a purely competitive market. IXC's have the market power and the incentive to assign costs to customers with the fewest choices. Accordingly, the Commission should remain vigorous in

¹⁴For example, MCI has routinely billed its residential customers \$1.07 for the PICC even when the underlying charge has been \$.53. Last year, MCI also billed many of its small business customers up to 30% of their usage for PICC or USF costs in order to ensure recovery of its targeted amount of revenue. Currently, all major carriers bill PICC and USF charges that are much higher than actual per-line costs.

ensuring that small customers of essential long-distance services have access to such services at fair and affordable rates.¹⁵

2. Competition as a Means to Resolve Low-Volume Issues.

The Commission has asked questions concerning the extent to which competition should be used to mitigate the harms caused to low-volume customers. NOI at ¶ 16. As Joint Consumer Advocates have stated above, the FCC should make certain that competition is able to work effectively to avoid unforeseen charges on the low-volume users' bills. As part of that approach, it is also important to make certain that consumers fully understand what charges they will incur if they "de-PIC" their IXC and exclusively use the dial around market to place all calls. Nonetheless, Joint Consumer Advocates propose that most consumers are entirely unfamiliar with and reluctant to apply the de-PIC option. The required advertising indicated above could also be used to clarify the de-PIC option that consumers have. The mere existence of this option at the present time does not relieve the Commission of the necessity to take direct action to mitigate or eliminate the harm now being caused to low-volume customers, especially when the PICC and USF surcharges continue to be billed to the customer, even after de-selecting the PIC, as explained above.

¹⁵If the toll market were truly competitive, it would not be possible for various IXCs to recover surcharges that substantially exceed the underlying cost (as IXCs admit they have) or that substantially exceed those of competing carriers.

3. Costs of Account Maintenance for Low-Volume Consumers.

The Commission notes that some IXC claim that account costs require them to apply charges for low-volume users. NOI at ¶ 17. While those costs certainly exist, Joint Consumer Advocates sincerely doubt that AT&T incurred costs of \$14.10 in a three month period so that a customer could place one six minute call as referenced above. (See also the telephone bill at Exhibit A). It is apparent that IXCs have been reducing their account costs by billing some customers less frequently and by bundling their billing with the LEC. High account costs cannot account for the magnitude of revenues that IXCs are recovering. These revenues are increasing while other usage-sensitive components of access charges are being eliminated, thereby unjustly enriching IXCs. Moreover, the per-customer revenue from PICC and USF surcharges are plainly in excess of the underlying costs to the IXCs. These practices should not be presumed to be cost-based without data or evidence supporting such a presumption. The Commission should especially not tolerate apparent price gouging as a response to its well-intended reforms.

4. Other Commission Action Necessary to Resolve these Issues.

The Commission reviews a number of other potential actions that it might take. NOI at ¶ 19. While the FCC has avoided rate regulation of long distance charges to consumers, it is not prohibited from applying such regulation. Joint Consumer Advocates would support direct action by the Commission to restrict the extent to which an IXC is permitted to impose charges that substantially exceed the costs to serve such customers or the costs imposed by the Commission's regulatory initiatives.

We believe that the Commission has ample authority to prohibit IXC's from surcharging customers for PICC and USF contributions. Section 201 of the Telecommunications Act of 1934, as amended continues to provide the Commission with the authority to ensure that rates are just and reasonable and to declare unjust or unreasonable rates to be unlawful. While the Notice of Inquiry questions whether PICC, USF and monthly minimums must be recovered, Chairman Kennard's letter to MCI's Chairman of February 26, 1998, as quoted above, suggests that the weight of the evidence is that the imposition of PICC and USF surcharges is unreasonable under current market and regulatory conditions.

The Joint Consumer Advocates share the Chairman's view that it does not appear that the public is generally receiving the benefit of access charge reductions - particularly the low volume consumer. If PICC surcharges, USF surcharges and monthly minimums recover revenues that are disproportionately collected from low-volume customers and exceed the underlying costs of IXC's, the FCC would have ample basis to conclude that rates to these customers are not just and reasonable. Initially, the Commission can prohibit the IXC's from collecting more than the designated per line cost that IXC's pay to LEC's for the PICC. Similar reductions can be ordered with respect to USF surcharges. However, the Commission should ultimately eliminate all end-user surcharges because they will always have unreasonable effects upon low-volume users.

Directly billing the PICC to the consumer, as the FCC proposes, is one means by which the Commission could avoid some aspects of the harm to low-volume users. While this would eliminate the current overt overcharging by IXC's for the PICC, it would only partially mitigate

the lack of affordability and the new high de-facto per-minute rates that many customers experience.

Ultimately, the Joint Consumer Advocates would recommend that the Commission address the filed rate doctrine which serves to protect IXC's from the basic consumer protection and disclosure laws to which all other sellers of services must conform. This could be done in a separate investigation.

5. Universal Service Obligations and Low Volume Users.

The Commission has posed a number of questions concerning universal service issues which we will address, in part, in the following discussion. The Joint Consumer Advocates emphasize that if other methods are unable to resolve these concerns, the Commission should correct such universal service or access charge contributions through rate regulation. NOI at ¶ 19.f. Further, the Commission has the option of requiring IXC's to recover their universal service and access charges on a percentage basis if that is necessary. This could be a very effective tool in mitigating the high dollar amounts being paid by customers who are light users of long distance services. NOI at ¶ 19.g. We also emphasize that the excessive charges for low-volume consumers have nothing to do with the recovery of Non Traffic Sensitive access charges through flat rate charges. NOI at ¶ 20. The excessive charges at issue cannot be rationalized by simply rate restructuring these costs on that basis.

6. IXC Rate Treatment.

The Commission has asked for comment concerning its opportunity to rate regulate IXCs in various respects. NOI at ¶¶ 21, 22. As stated above, Joint Consumer Advocates support the elimination or capping of end-user surcharges, improved disclosure requirements and, reducing excessive charges by reducing the SLC which almost all residential consumers are still required to pay through their Incumbent Local Exchange Carriers. The Joint Consumer Advocates would also support requiring rate plans that do not include a minimum monthly charge, that do pass through a portion of interstate switched access charge reductions to a basic rate plan, and that include consumer education inserts in bills that inform of other alternatives. NOI at ¶ 21. If surcharges are not eliminated, we support the alternative of capping the PICC and USF surcharges as a percentage of the usage portion of the bill.

7. Relationship to Low Income Programs.

The Commission notes that some federal charges are reduced or eliminated for low income consumers enrolled in Lifeline programs. NOI at ¶ 23. However, such programs will not resolve these issues for many low-volume users who are also low income.

First, many low income consumers are not enrolled in the Lifeline programs even when they are eligible. The minimum Lifeline enrollment qualification requirements are that eligible consumers must be enrolled in various low income programs. 47 C.F.R. § 54.409. While many states have broadened their qualifications for enrollment beyond those set forth in the FCC regulations, many low income consumers may not qualify for such Lifeline enrollment simply

because they are not enrolled in such programs. More importantly, even when otherwise eligible, many low income consumers do not enroll in Lifeline for various other reasons. This includes a lack of awareness of the Lifeline program by low income consumers in many states.

Simply having benefits available to Lifeline customers will not guarantee that all low income consumers will receive such benefits. Moreover, even if all low income customers were on a Lifeline rate, the Commission should still not allow unreasonable charges to appear on non-Lifeline bills. Whatever low-volume protections the Commission may apply should not be limited to Lifeline enrolled consumers.

8. Effect of Other Surcharges.

The Commission asks whether it should also take into account the surcharges that it has also applied, e.g. the local number portability surcharge. NOI at ¶¶ 24, 25. As stated above, Joint Consumer Advocates believe that the Commission should consider the high minimum charges applied to the low-usage consumers as a part of the larger problem of the large non-usage related surcharges that appear on the bills of all consumers. Whether they place a large or small amount of interstate calls, the totality of these charges have caused consumers to regularly complain to many state consumer advocate offices that there are a large number of surcharges on their bills and that their bills seem to increase as the market becomes deregulated. This phenomenon is causing a great deal of consumer skepticism about the benefits of competition. It is apparent that no matter how the IXC industry may promote the benefit of low per minute rates, such rates constitute only a part of the interstate bill, and consumers are waking up to that fact.

Thus, the Commission should clearly reduce these surcharges if it wants public support for its pro-competitive initiatives.

The Commission also asks whether it would be appropriate to consolidate all such line items into a single line on the bill. Joint State Advocates strongly oppose any attempt to consolidate the various fixed charges on the bill and apply it through the monopoly ILEC bill as a means of simplifying telephone charges. We reiterate that much of the problem in this area lies in the practice of IXCs deceptively marketing calling plans to consumers without clearly indicating what fixed charges they will apply regardless of usage. After buying a 7¢ per minute plan, the consumer is often shocked to find a jumble of surcharges at the bottom of the bill that were never seen on the TV ad. The Commission must clearly fix this problem so as to assure consumers that they are being benefitted by competition. The solution is not simply to add up all these surcharges, make them unavoidable and move them to another portion of the customer's bill. Customers are more sophisticated than such a "solution" would suggest.

III. CONCLUSION

For the foregoing reasons, the Pennsylvania Office of Consumer Advocate, the Maine Office of Public Advocate, the Maryland Office of People's Counsel, the New Mexico Attorney General, the Missouri Office of the Public Counsel, the Connecticut Office of Consumer Counsel, the New Hampshire Office of Consumer Advocate, the Washington D.C. Office of People's Counsel, and the Washington Office of Attorney General respectfully request that the Federal Communications Commission review these Comments as it considers what actions to take concerning the Notice of Inquiry in the Matter of Low-Volume Long-Distance Users and that the Commission promptly take direct action to relieve low-volume telephone customers of the unreasonable harms that they have experienced since the Telecommunications Act of 1996.

Respectfully submitted,



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Dated: September 22, 1999

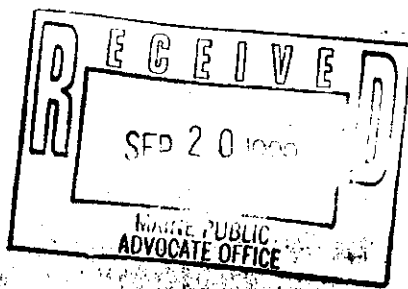


Exhibit A

Account Number
Bill Period
AT&T[REDACTED]
Aug 7 - Sep 6, 1999
Page 2 of 2**AT&T Invoice Charges For Period Ending AUG 29, 1999**

You may notice increases in the Universal Connectivity Charge and the Carrier Line Charge beginning in July. For current information on these charges please call 1 800 532-2021.

Itemized calls**Directly dialed**

No.	Date	Place called	Number called	Time	Rate	Min.	Amount
1.	JUL 29	RICHMOND VA	[REDACTED]	09:04 PM	EVE	1	\$0.16
					Sub Total		\$0.16
					Total		\$0.16

Other charges and credits

2. Amount billed to monthly usage minimum	5.84	&
This amount is the total difference between the \$5 monthly usage minimum and your qualifying calls and charges each month.		
Total	5.84	

Taxes & Subscriptions**National Access Contribution**

3. Universal Connectivity Charge	2.91
4. Carrier Line Charge	3.87
For an explanation of this charge, please call 1 800 532-2021.	
Total	6.78

Taxes

5. Federal Tax @ 3%	0.38
Total	0.38

Total AT&T Invoice charge**\$13.16**

Dear Mr Ward:
I called AT&T and they tell me that there is nothing wrong with this billing. I think \$13.16 is a lot of money for a one minute phone call, what do you think? It's a good thing I only make two or three calls a year,
[REDACTED]


BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION

In the matter of : CC Docket No. 99-249
:
Low-Volume Long-Distance Users : FCC 99-168

I hereby certify that I have this day served a true copy of the foregoing document,
Comments of the Joint Consumer Advocates, upon parties of record in this proceeding.

Dated this 22nd day of September, 1999.

Respectfully submitted,



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Assistant Consumer Advocate

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